IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 541 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRDHARBHAI DAHYABHAI

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Appellant

MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 02/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal preferred by the accused arises of the judgment and order dated 1st June, 1996, passed by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 7/95. The learned trial Judge has convicted the accused-appellant for the offence punishable under section 302 IPC and has passed the sentence of life imprisonment and a fine of Rs. 500/-upon him. Three months' simple imprisonment has been imposed in the event of the accused failing to deposit the amount of fine.

The facts leading to the present appeal, are as under :

The accused nos. 1 and 3 Girdharbhai Dahyabhai and Lavjibhai Dahyabhai are the sons of accused no.2 Dahyabhai Vashrambhai, accused no. 4 Kailasben Dahyabhai is the daughter of the accused no.2 Dahyabhai Vashrambhai, accused no. 5 Bhanuben is the wife of Gordhanbhai Dahyabhai. The complainant - Jayaben is the wife of the accused no. 3 Lavjibhai Dahyabhai. The deceased Lalji was the brother of the complainant Jayaben, and was married to Hansaben-the daughter of the accused no. 2 Dahyabhai Vashrambhai. All the accused and the complainant Jayaben were residing together at village-Kikariya. The accused no. 3 Lavjibhai Dahyabhai was serving in a diamond factory at Surat, and was residing at Surat. During the absence of Lavjibhai Dahyabhai, the accused no. 2 Dahyabhai Vashrambhai made unhealthy demands on the complainant-Jayaben, for which, she complained to her husband Lavjibhai Dahyabhai. The said issue had caused some unrest in the family, and the complainant-Jayaben had gone to her maternal home at Khambha. A few days before the date of the incidence, the accused no.2 Dahyabhai Vashrambhai and his elder son Dharamshibhai Dahyabhai went to Khambha and brought Jayaben back to village-Kikariya. After some days, i.e. on 12th September, 1994 at around 11-00 O'clock in the forenoon, the deceased Laljibhai came to village Kikariya to inquire about the well being of his sister-Jayaben. After sometime while he was inquiring about the matter of Jayaben, Jayaben started crying. Thereupon, the accused Dahyabhai Vashrambhai, Lavjibhai Dahyabhai and others carried Laljibhai out of the room and brought him on the open platform (Osri) in the front of the house. At that time, the accused no. 1 Girdharbhai Dahyabhai brought a knife from the house and inflicted blows on the stomach of the deceased Laljibhai. The deceased Laljibhai started bleeding profusely and died within minutes. When

the deceased Laljibhai was being carried out of the house by some of the accused, Jayaben tried to intervene, however, she was caught hold by Kailashben and Bhanuben-the accused nos. 4 and 5. Pursuant to the said incidence, information was sent to Mota Khuntvada Police Station. The Investigating Officer, Rameshbhai Chhaganbhai Chaudhari (PW-8) having received the message from the PSO went to village-Kikariya to inquire about the incidence. Having reached village-Kikariya, he was informed that the people were crying in Kumbharwada. He, therefore, went to Kumbharwada to the house of the complainant. The body of the deceased-Laljibhai was lying on the platform (Osri). Jayaben was present there and she was crying. Jayaben gave the complaint about the incidence which was recorded by the said officer. The complaint is produced on the record at Ex.49. Pursuant to the complaint lodged by Jayaben, an offence punishable under sections 147 and 148 and section 302 read with section 149 IPC was registered against the five accused. All the five accused were tried by the learned Additional Sessions Judge, Bhavnagar, in Sessions Case No. 7/95. Having considered the evidence on record, the learned Additional Sessions Judge, under his judgment and order dated 1st June, 1996, acquitted all, but the accused no.1-appellant of the charge framed against them. The accused no.1-appellant was convicted for the offence punishable under section 302 IPC, however, was acquitted for the offences punishable under sections 147, 148 and 504 IPC. The learned trial Judge passed the sentence of life imprisonment and fine upon the appellant-accused no.1 as recorded hereinabove. Feeling aggrieved, the accused no. 1 has preferred the present appeal.

The injuries sustained by the deceased Laljibhai and the cause of death has been proved by the prosecution by examining Dr.Jayantibhai Shivabhai (PW-1). Dr.Jayantibhai Shivabhai was the Medical Officer at Community Health Centre at Mota Khuntavada. He was the Medical Officer who performed the postmortem on the body of the deceased Laljibhai at Mahuva Municipal Hospital. He has proved the postmortem note (EX-20). He has certified that the deceased Laljibhai had suffered two bruise, one on the right chick and other on the chest. He had also suffered an incised wound on the stomach 2 CM above the umbilicus of the size of about 6 to 7 CM X 3 CM X organ deep. The said stab wound had caused injuries on stomach and spleen and the intenstine had come out of the said wound. The deceased had suffered massive hemorrhage. He has certified that " the cause of death of the deceased Laljibhai Ambalal Kumbhar, about 28 years, is internal and external hemorrhage due to

injuries on vital organs." The Medical Officer has also opined that the said injury could have been caused by the muddamal article no. 3 knife.The only eye witness to the incident is the complainant Jayaben who has deposed that on 11th September, 1994, her brother Laljibhai had come to village Kikariya to see her. While inquiring about her well being, she started crying. The said Laljibhai, therefore, was carried out by her husband-Lavjibhai Dahyabhai, her brothers-in-law Karmshibhai and Girdharbhai, and her father-in-law Dahyabhai Vashrambhgai Girdharbhai Dahyabhai had brought knife from the house and had stabbed Laljibhai in the stomach. While Jayaben tried to intervene, Kailasben and Bhanuben caught hold of her. The blood stained knife was recovered from the kitchen of the said house. On forensic examination, the blood group of the deceased was found to be of group 'A', while that of the accused no. 1 Girdharbhai Dahyabhai was of group 'B', and of accused Lavjibhai Dahyabhai and Dahyabhai Vashrambhai was of group 'AB'. The human blood of group 'A' (i.e. that of the deceased Laljibhai) was found present on the mud plaster at the place of the incidence, the muddamal knife, shirt and the pants i.e. clothes of the deceased.

Considering the above material evidence on record, the learned trial Judge held that the common intention of the accused to kill the deceased Laljibhai was not proved. However, the injury was caused to the deceased Laljibhai intentionally. The learned trial Judge has convicted the accused no.1-appellant for offence punishable under section 302 IPC. We are of the view that having held that there was no intention to kill the deceased Laljibhai, the learned trial Judge is not right in convicting the appellant-accused no.1 for 'murder' under section 300 IPC.

It should be noted that the deceased Laljibhai was not only the brother of the complainant-Jayaben who was the wife of the accused no.3-Lavjibhai Dahyabhai, but was also the husband of Hansaben-daughter of the accused no. 2 Dahyabhai Vashrambhai and the sister of the accused nos. 1, 3 and 4 Girdharbhai Dahyabhai and Lavjibhai Dahyabhai, and Kailasben Dahyabhai. Besides, there was some unrest in the family on account of the allegation of 'illicit demand' made by Jayaben against her father-in-law Dahyabhai Vashrambhai. At this sensitive moment, visit of the deceased Laljibhai and crying of Jayaben appear to have enraged the accused no.1 Girdharbhai Dahyabhai and in the heat of the passion, he brought the knife from the house and stabbed Laljibhai on his stomach. However, it can not be gainsaid that such

injury was caused by accused no.1 Girdharbhai Dahyabhai with full knowledge that the weapon used by him was a fatal weapon and injury on stomach could cause injuries to vital organs within. The weapon used and the intensity of the injury on the vital organs of the body of the deceased can lead to one and the only conclusion that the said injury was caused by the accused no.1 Girdharbhai Dahyabhai with an intention to kill. On overall examination of the evidence on record, we have no hesitation in holding that the accused no.1-appellant had caused fatal injuries to the deceased Laljibhai in the heat of passion. The said accused, therefore, can be said to have committed culpable homicide not amounting to murder. He has thus, committed an offence punishable under section 304 (Part-I) IPC. The conviction under section 302 IPC recorded by the learned trial Judge is quashed and set aside. Instead, the appellant-Girdharbhai Dahyabhai is convicted for the offence punishable under section 304 (Part-I) IPC. The sentence of life imprisonment passed against the accused Girdharbhai Dahyabhai is altered to that of RI undergone. The sentence of fine and imprisonment for default in payment of fine, is confirmed.

The appeal is allowed to the above extent. The appellant, unless, is required to be detained in some other case, be released forthwith. The muddamal articles be disposed of as directed by the learned trial Judge.

(MS R.M.DOSHIT J)

(A.L.DAVE J)

JOSHI